

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott  
Edward A. Garvey  
Marshall Johnson  
LeRoy Koppendrayer  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application of the City of  
Lake Crystal to Extend its Assigned Service  
Area into the Area Presently Served by Blue  
Earth-Nicollet-Faribault Cooperative Electric  
Association

ISSUE DATE: August 13, 2002

DOCKET NO. E-104,262/SA-01-755

ORDER ACCEPTING AND ADOPTING THE  
ALJ'S REPORT

**PROCEDURAL HISTORY**

On May 11, 2001, the City of Lake Crystal (Lake Crystal or the City) submitted a petition regarding its service area boundary with Blue Earth-Nicollet-Faribault Cooperative Electric Association (BENCO or the Cooperative). The City requested in its petition that the Commission:

1. incorporate the Lilly Lakes Estates area into the assigned electric service area of the City;
2. determine the boundary of the City's assigned service area in the Crystal Creek Development and incorporate any of that development outside the City's current assigned service area into the assigned service area of the City;
3. grant the City authority to provide interim service throughout Lilly Lakes Estates and the Crystal Creek Development; and
4. determine the appropriate compensation to be paid by the City to BENCO for acquisition of BENCO's service territory.

On November 16, 2001, the Commission issued its ORDER DISMISSING CLAIMS, DESIGNATING INTERIM PROVIDER, AND NOTICE AND ORDER FOR HEARING. The Order dismissed every part of the City's petition except that it referred the matter to the Office of Administrative Hearings (OAH) for a contested case proceeding to determine the location of the service territory boundary within the Crystal Creek Development area. Further, the Order assigned BENCO to provide interim electric service within the Crystal Creek area.

On May 10, 2002, the Administrative Law Judge (ALJ) issued his Findings of Fact, Conclusions, Recommendation and Memorandum, in which he recommended that the Commission determine that the boundary line between the two electric utilities is most accurately represented by the red line on Exhibit 2, Attachment C in this proceeding.<sup>1</sup>

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<sup>1</sup> Also referred to as Exhibit 2, Sutherland Exhibit C.

On May 30, 2002, BENCO filed its exceptions.

On June 10, 2002, Lake Crystal filed its response to BENCO's exceptions.

On July 18, 2002, the matter came before the Commission.

## **FINDINGS AND CONCLUSIONS**

### **I. Background**

#### **A. The Issue**

The issue here is the location of the boundary between the assigned electric service territory of the City of Lake Crystal and BENCO in the Crystal Creek Subdivision. Resolution of the exact boundary location will determine which electric utility has the right to provide electric service to 16 residential lots in the subdivision and the sewage lift station constructed in the subdivision by the City.

#### **B. History**

In July of 1974 a number of electric companies doing business in Blue Earth County submitted a map to the Minnesota Public Service Commission, delineating their agreed upon service territories. Among the utilities were BENCO Electric Association and the Lake Crystal Light Plant. The underlying map upon which the delineations appeared was a General Highway Map for Blue Earth County Minnesota, dated 1973, marked with lines indicating the electric service area boundaries of the respective electric companies (the 1974 map).

In 1981 the Minnesota Department of Public Service issued an Electric Service Area Map of Blue Earth County. This map had lines of delineation placed upon a General Highway Map of Blue Earth County issued by the Department of Transportation, dated 1977 (the 1977 map).

Neither of the maps has accompanying narrative. The lines on the maps are the only service territory definitions. The lines on both maps are drawn thickly and represent a width of up to several hundred feet.

Introduced at the ALJ hearing was a map marked "Sutherland Exhibit C" dated February 14, 2002 prepared by Bolton and Menk, Inc. for the City of Lake Crystal. This map shows the platting of the Crystal Creek Subdivision. It shows a red line representing the City's view of the service territory boundary, and a green line, representing BENCO's view of the service territory boundary.

#### **C. Positions of the Parties**

##### **1. City of Lake Crystal**

The City relied on the 1974 map as the appropriate map to determine the service area boundary between these utilities. The City asked that all the lots in the Crystal Creek Subdivision, and Outlot B, be found to be within the City's service territory. In the alternative, the City requested that the red line on Sutherland Exhibit C be found to be the service territory boundary line. In this scenario lots 15, 16, 17 and 18 would be considered within BENCO's service territory.

## **2. BENCO**

BENCO believed the 1977 map was the appropriate map to determine the boundary in question. This would include in the BENCO service territory lots 1-4, 11-18, Outlot B and parts of lots 7, 9 and 10.

### **II. Summary of the ALJ's Findings of Fact, Conclusions, Recommendation and Memorandum**

The ALJ made the following Conclusions:

- When the parties agreed to the boundaries on the 1974 map, the parties intended to include within their territory locations to which they were then providing electric service. In an Order issued by the Commission on April 7, 1975<sup>2</sup>, the Commission intended to adopt the boundaries agreed to by the utilities providing service.
- The 1974 map signed by the parties is determinative and the 1977 map is in error, containing an unexplained shift of the eastern boundary in a westerly direction.
- The City of Lake Crystal has extended its electric distribution facilities into a portion of the electric service territory assigned to BENCO.

The ALJ recommended that the Commission determine that the boundary line between the electric service territory of the City of Lake Crystal and BENCO in the area of the Crystal Creek Subdivision is most accurately represented by the red line on Exhibit 2, Attachment C in this proceeding. The ALJ described that line as follows:

The northeastern end point of the line is located at the northeastern corner of the Price property at its intersection with Highway 60. The correct line then runs southwesterly to the point at the southeastern corner of the Clarence Herbst property.

The ALJ's Findings of Fact and Memorandum included, among other things, the following:

- The ALJ was persuaded that the 1974 map should be the basis for determining the service boundary between the two utilities. The ALJ, however, recognized that relying on the 1974 map did not immediately resolve the dispute. The width of the line used to mark the boundary between service areas represents as much as 460 feet. Within that green line at the northeasterly corner of the service boundary are the possible starting points proposed by both BENCO and the City.
- The ALJ was persuaded that the parties intended in 1974 that the line include all of the Price property. The City of Lake Crystal was providing service to the homestead on the Price property at the time the 1974 map was signed. The testimony of Al Sutherland, one of the individuals who signed the 1974 map, indicated that the City intended to keep the entire Price property within its territory because the City anticipated development of the property due to its access to the highway and the railroad.

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<sup>2</sup> In Docket USA-11.

- The ALJ was further persuaded by the testimony of Mr. Sutherland that the intent was for the City to retain service rights to two properties being served in the area south of the lake but not within the existing municipal boundaries. This puts the southern termination of the boundary line slightly to the east of where BENCO urges it be located.

Specifically the ALJ made the following findings:

- In 1974, the northeastern boundary of the eastern perimeter line was agreed to be at the northeastern corner of the Price property at its intersection with highway 60. That point is within the width of the green boundary marking on the 1974 map.
- The southeastern boundary of the eastern perimeter line was agreed to be the southeast corner of the Clarence Herbst property, the furthest southeastern property then served by the City of Lake Crystal. That property was outside the boundaries of the City of Lake Crystal but was receiving electric service from Lake Crystal.
- The eastern boundary line between the utilities extends between the above two points as marked by the red line on Exhibit 2, Attachment C.
- A portion of the Crystal Creek Subdivision lies east of the eastern boundary of the service area of the City and is in the service territory of BENCO. This includes all of lots 15, 16, 17 and 18 as well as portions of lots 13 and 14 in Block 1. The service territory boundary also splits Outlot B and lots 1, 2, 3, and 4 in Block 4.

### **III. BENCO's Exceptions to the Findings of Fact, Conclusions of Law , and Recommendations of the ALJ**

BENCO argued that the ALJ recommended a boundary line that conflicts with the line shown on the 1974 map and with the line shown on the 1977 map. It argued that the ALJ's decision is not supported by substantial evidence. BENCO takes the following exceptions:

Exception 1:

In determining that the 1974 map established the boundary line in the Crystal Creek Subdivision, the ALJ ignored evidence that the parties used and accepted the 1977 map, rather than the 1974 map, in previous service territory transactions. Where parties have used the Commission approved service territory map for past boundary line issues, that map should prevail.

Exception 2:

The ALJ adopted the boundary line proposed by Mr. Sutherland (Exhibit 2, Attachment C). BENCO argued that the Sutherland line is a different line from the line that appears in either the 1974 or 1977 maps. BENCO argued that the ALJ's finding that the Sutherland line fit within the green boundary line on the 1974 map was erroneous.

It argued that Mr. Sutherland signed the 1974 map for the City with the green line demarking the parties' service territories. The line that Mr. Sutherland helped prepare in 1974 conflicts with where he now says the line should be (as set forth on Exhibit 2, Attachment C).

#### Exception 3:

BENCO argued that the Commission should adopt the boundary line proposed by BENCO because it is virtually identical to the line drawn by the City engineers in a June 18, 2001 letter, based on the 1974 map. BENCO argued that this line was drawn before the City engineers had any discussion with Mr. Sutherland on where he believed the boundary line was. The city engineers, in interpreting what they believed to be the applicable service territory map, proposed a boundary line virtually identical to BENCO's line. BENCO argued that the city engineers' line was based on where Mr. Sutherland drew the green line on the 1974 map, not where he now claims the line to be.

### **IV. City of Lake Crystal's Response to BENCO's Objections**

The City agreed with the ALJ's findings and conclusion that the boundary line in the present case is the red line in Exhibit 2, Attachment C (Sutherland line). The City argued that in adopting the boundary line as described by Mr. Sutherland, the ALJ rationally relied on the unrebutted testimony of Mr. Sutherland about the parties' intent in forming the 1974 map agreement, which the Commission adopted in its 1975 Order creating exclusive service territories.

It argued that BENCO's reliance on the 1977 map ignores the 1974 map agreement and ignores the Commission's 1975 Order.

The City argued that BENCO's arguments that the Sutherland boundary line adopted by the ALJ contradicts the Commission maps is incorrect. The historical line described by Mr. Sutherland follows the Commission maps. Further, the Sutherland line depicted on Exhibit 2, attachment C, was drawn to be survey-accurate. The Bolton and Menk firm hired by the City took Mr. Sutherland's testimony and the specific endpoints he described and used global positioning equipment to locate the specific lines described.

Further, only the Sutherland line reflects the parties' intent, when creating their exclusive service territories in the 1974 map, to maintain, where possible, current service providers to their customers. Mr. Sutherland's testimony was unrebutted concerning the boundary line's precise starting point in the north and endpoint in the south. His testimony further supported that the City intended to have the entire Price property within the City's service territory for possible future development.

### **V. Commission Action**

The Commission concurs with, accepts and adopts the ALJ's findings, conclusions and recommendations on this matter. They are well developed, thoughtful, and supported by the weight of the evidence. The ALJ was faced with a situation in this case where the boundary on a map was clearly ambiguous and the ALJ relied on testimony to determine the intentions of the parties. The ALJ was in the best position to determine credibility of witnesses and the Commission will defer to the ALJ's determinations on these issues.

Based on the recommendation of the ALJ, the Commission will find that the red line on Exhibit 2, Sutherland Exhibit C is the official service territory boundary between BENCO and the City of Lake Crystal utilities in the Crystal Creek subdivision.

**ORDER**

1. The Commission adopts and incorporates herein the ALJ's report consisting of Findings of Fact, Conclusions, Recommendation and Memorandum.
2. The red line on Exhibit 2, Sutherland Exhibit C to this proceeding shall be the official service territory boundary between these utilities within the Crystal Creek subdivision.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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